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OFFICE OF PETITIONS

In re Application of :
Nishino et al. :
Application No. 10/533,183 : LETTER REGARDING
Filed: April 28, 2005 : PATENT TERM ADJUSTMENT
Attorney Docket No. 5404/104 :

This is in response to the "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT," filed October 10, 2008. Pursuant to their duty of good faith and candor to the Office, applicants disclose that the initial determination of patent term adjustment pursuant to 35 U.S.C. 154(b) of 403 days may extend the term of the patent by too many days.

The request for review of the patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is three hundred thirty-seven (**337**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On September 5, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 403 days. Applicants do not state a basis for their disclosure that the patent term adjustment may extend the term by too many days.

Nonetheless, a review of the application history confirms that the initial determination of patent term adjustment is incorrect. An additional period of reduction of 66 days should have been entered. 37 C.F.R. § 1.704(b) provides:

With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

A final Office action was mailed on March 17, 2008. Applicants took until August 22, 2008, three months and 66 days later, to file an amendment in compliance with §1.113(c) in response. Accordingly, pursuant to 37 CFR 1.704(b), a period of reduction of 66 days should have been entered.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is three hundred thirty-seven (337) days.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks Applicants for their good faith and candor in bringing this to the attention of the Office.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and

for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM Screen

PALM INTRANET**PTA Calculations for Application: 10/533183**

Application Filing Date:	04/28/2005	PTO Delay (PTO):	435
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	32
Post-Issue Petitions:	0	Total PTA (days):	337
PTO Delay Adjustment:	-66		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
52	03/05/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		66	
38	09/05/2008	MAIL NOTICE OF ALLOWANCE			
37	09/03/2008	ISSUE REVISION COMPLETED			
36	09/03/2008	DOCUMENT VERIFICATION			
35	09/02/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
34	09/02/2008	CASE DOCKETED TO EXAMINER IN GAU			
33	09/02/2008	NOTICE OF ALLOWABILITY			
29	03/17/2008	MAIL FINAL REJECTION (PTOL - 326)			
28	03/08/2008	FINAL REJECTION			
27	02/06/2008	DATE FORWARDED TO EXAMINER			
26	01/07/2008	RESPONSE AFTER NON-FINAL ACTION		32	24
25	01/07/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
24	09/06/2007	MAIL NON-FINAL REJECTION	435		-1
23	09/04/2007	NON-FINAL REJECTION			
21	05/23/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
20	04/28/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
18	05/25/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	01/13/2006	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
16	11/22/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
15	11/04/2005	CASE DOCKETED TO EXAMINER IN GAU			
		REQUEST FOR FOREIGN PRIORITY (PRIORITY			

14	04/28/2005	PAPERS MAY BE INCLUDED)			
13.7	05/23/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	05/23/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12.7	04/28/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	04/28/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	04/28/2005	PRELIMINARY AMENDMENT			
10	09/29/2005	CLEARED BY OIPE CSR			
9	04/28/2005	371 COMPLETION DATE			
8	09/21/2005	APPLICATION RETURN FROM OIPE			
7	09/21/2005	NOTICE OF DO/EO ACCEPTANCE MAILED			
6	09/21/2005	APPLICATION RETURN TO OIPE			
4	09/14/2005	APPLICATION DISPATCHED FROM OIPE			
3	09/14/2005	NOTICE OF DO/EO ACCEPTANCE MAILED			
2	06/15/2005	PCT CLASSIFICATION			
1	04/28/2005	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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